

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HILLARY LAWSON, KRISTINA HALLMAN, :
STEPHANIE CALDWELL, MOIRA HATHAWAY, :
MACEY SPEIGHT, ROSEMARIE PETERSON, and :
LAUREN FULLER, :

Plaintiffs, :

-against- :

HOWARD RUBIN, JENNIFER POWERS, and the :
DOE COMPANY, :

Defendants. :
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MEMORANDUM
AND ORDER
17-CV-6404 (BMC) (SMG)

GOLD, STEVEN M., U.S.M.J.:

On October 29, 2018, non-party Robert Aloï moved to quash a subpoena served by defendant Howard Rubin on AT&T (the “AT&T subpoena”). Dkt. 200. Rubin has submitted opposition to the motion. Dkt. 206. United States District Judge Brian M. Cogan has referred the motion to me for decision. Order dated October 31, 2018.

A brief discussion of some underlying facts may help to place the pending motion in context. Plaintiffs in this action accuse Rubin and his co-defendants of “luring them across the country to assault them as part of a pattern of criminal sexual misconduct including beatings to the point of unconsciousness and acts of rape.” Am. Compl. ¶ 2, Dkt. 66. Defendant Rubin represents, and Aloï does not dispute, that Aloï communicated with certain plaintiffs about their interactions with Rubin, and that some of these communications took place by telephone and text message. Def. Howard Rubin’s Mem. of Law in Opp’n to Robert Aloï’s Mot. to Quash Subpoena Duces Tecum (“Rubin Mem.”) at 1, Dkt. 206. Aloï was charged in a criminal complaint in New Jersey with extortion based, in part, upon communications he had with Rubin

concerning Rubin's sexual encounters with plaintiffs. *Id.* Although the criminal case was dismissed, New Jersey state prosecutors are appealing the dismissal. *Id.*

The AT&T subpoena seeks production of documents relating to a telephone number associated with Aloï. AT&T Subpoena at 4, Dkt. 206-4. The documents sought include those reflecting the dates, times, and telephone numbers of calls made to or from the Aloï telephone number; the content of text messages sent or received by the Aloï telephone number; and the content of voicemails received by the Aloï telephone number. AT&T Subpoena at 9. The subpoena's scope is limited in time from January 1, 2017 through the date of responsive production. AT&T Subpoena at 8.

AT&T has not filed a motion to quash and, according to Rubin, has not raised any objection to the subpoena. Decl. of Benjamin M. Rose in Opp'n to Robert Aloï's Mot. to Quash Subpoena Duces Tecum ("Rose Decl.") ¶ 6, Dkt. 206-1.

Aloï's motion raises what may be understood as three grounds to quash the AT&T subpoena. First, Aloï contends that AT&T's compliance with the subpoena would violate Aloï's privilege against self-incrimination. The AT&T subpoena does not, however, call upon Aloï to testify, produce documents, or do anything at all. Under these circumstances, AT&T's compliance with the subpoena simply cannot, as a logical matter, violate Aloï's Fifth Amendment right not to incriminate himself.

Second, Aloï argues that the information sought by the AT&T subpoena is extremely private. A subpoena must be quashed if it subjects an individual to "undue burden." Fed. R. Civ. P. 45(d)(3)(A)(iv). Aloï is undoubtedly correct that the materials sought by the subpoena may reveal sensitive, private information. But the allegations in this case are extremely serious,

and it is at least plausible that the information sought from AT&T will be highly relevant to those allegations. Accordingly, while the burden on Aloï may be substantial, it is not “undue.”

Finally, Aloï claims that AT&T’s production will reveal attorney-client privileged communications. During a prior proceeding, Aloï informed the Court that he is represented by counsel with respect to the New Jersey criminal proceedings. Tr. of Telephone Conference held Oct. 17, 2018 at 4:19–5:11, Dkt. 198. It is certainly reasonable to think that Aloï and his counsel may have exchanged text messages or that Aloï’s counsel may have left voicemail messages for Aloï during the time period covered by the subpoena. Apparently recognizing the validity of Aloï’s concern in this regard, Rubin proposes that any communications between Aloï and his attorneys be excluded from AT&T’s production in response to the subpoena. Rubin Mem. at 6. Whether AT&T will be able or willing to sift such communications from its production, though, is unknown.

Having considered the parties’ arguments, and for the reasons stated above, Aloï’s motion to quash is denied, with the following exception. Aloï shall, by December 3, 2018, provide the names and telephone numbers of anyone he claims was representing him as an attorney during the time covered by the AT&T subpoena. Rubin shall request of AT&T that it exclude from its production any text messages between Aloï and his attorneys or messages left on Aloï’s voicemail from his attorneys. If AT&T is unable or unwilling to remove those communications from its production, counsel for Rubin shall use their best efforts to isolate any attorney-client communications from the documents produced by AT&T in response to the subpoena without examining their contents and shall not review those documents further without explicit leave of the Court. If Aloï requests the opportunity to review, or have his counsel review, the production made by AT&T *before* Rubin’s counsel does, that request will be granted.

In that event, Aloï and his counsel may segregate any documents that they contend reveal privileged communications and submit those documents to the Court for *in camera* review.

Defendant Rubin shall promptly serve Aloï with this Memorandum and Order and file proof of service with the Court.

SO ORDERED.

/s/
Steven M. Gold
United States Magistrate Judge

Brooklyn, New York
November 19, 2018

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